

AMENDED IN SENATE APRIL 5, 2010

**SENATE BILL**

**No. 1347**

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**Introduced by Senator Leno**

February 19, 2010

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*An act to add Article 6.1 (commencing with Section 12610) to Chapter 6 of Title 2 of Part 4 of the Penal Code, relating to ~~electroconductive~~ electronic control weapons.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1347, as amended, Leno. ~~Electroconductive weapons.~~ *Electronic control weapons.*

Existing law regulates the use and possession of less lethal weapons and stun guns, which are defined to include weapons able or intended to stun or immobilize a person, like the electrical weapons commonly known as tasers.

This bill would ~~express the intent of the Legislature to later amend the bill to~~ codify the holding of the United States Court of Appeals for the Ninth Circuit in *Bryan v. McPherson*, No. 08-55622 (2009) 590 F.3d 767, relating to the use of tasers by law enforcement, *would make findings and declarations about electronic control weapons, and would encourage law enforcement agencies to establish use of force policies regarding those weapons, as specified. The bill would provide that an electronic control weapon, as defined, may only be used when objectively reasonable and compatible with specified constitutional provisions and may not be used in the absence of a threat of imminent physical harm to the officer or to others.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. The Legislature finds and declares all of the*  
2     *following:*

3     *(a) The use of electronic control weapons by law enforcement*  
4     *officers can be an effective law enforcement tool to subdue persons*  
5     *who pose an imminent threat of serious physical harm to the officer*  
6     *or to others.*

7     *(b) It is important that law enforcement officers and agencies*  
8     *recognize the risks of serious injury and even death that can result*  
9     *from electronic control weapons use.*

10    *(c) Uniform minimum statewide standards regarding the use of*  
11    *electronic control weapons by law enforcement officers will*  
12    *address public concern regarding when officers may appropriately*  
13    *use this type of force and will protect law enforcement officers*  
14    *against unjustified allegations of excessive force.*

15    *(d) Law enforcement agencies are encouraged to establish use*  
16    *of force policies for use of electronic control weapons that are*  
17    *consistent with this section, and with best practices policies and*  
18    *training procedures recommended by numerous national and*  
19    *international bodies such as the Maryland Attorney General and*  
20    *the Police Executive Research Forum.*

21    *(e) Prior to implementing an electronic control weapons*  
22    *program, law enforcement agencies are encouraged to involve*  
23    *medical and mental health experts to help ensure that policies and*  
24    *practices are consistent with best practices for minimizing the*  
25    *need to use electronic weapons or other force and assist with*  
26    *understanding, identifying, and responding to mental health and*  
27    *medical issues related to electronic control weapons.*

28    *(f) In order to ensure that public concerns are understood and*  
29    *addressed, law enforcement agencies are encouraged to involve*  
30    *community stakeholders before deciding whether to implement an*  
31    *electronic control weapons program.*

32    *(g) It is the intent of the Legislature in enacting this measure*  
33    *to codify the holding of the Ninth Circuit Court of Appeal in Bryan*  
34    *v. McPherson (9th Cir. 2009) 590 F.3d 767.*

35    *SEC. 2. Article 6.1 (commencing with Section 12610) is added*  
36    *to Chapter 6 of Title 2 of Part 4 of the Penal Code, to read:*

Article 6.1. *Electronic Control Weapons*

12610. (a) “Electronic control weapon” means any device used or intended to be used as an offensive or defensive weapon that is capable of temporarily immobilizing a person by the infliction of an electrical charge.

(b) The use of an electronic control weapon by a peace officer constitutes an intermediate, significant level of force and may be authorized by the officer’s employing agency only in circumstances where that use is objectively reasonable and compatible with the Fourth Amendment and Section 13 of Article 1 of the California Constitution.

(c) Law enforcement agencies shall not authorize the use of electronic control weapons for the purpose of obtaining compliance absent a threat of imminent physical harm to the officer or others.

(d) Reasonableness, for purposes of this section, shall be determined based on the totality of the circumstances, with the most important factor being whether the suspect poses an immediate serious physical threat to the officer or others.

(e) Additional factors that shall be considered in determining reasonableness include, but are not limited to, the following:

(1) The severity of the offense for which the suspect is being arrested or detained.

(2) The nature and degree of any resistance by the suspect.

(3) To what degree the officer warned the suspect that an electronic control weapon would be used.

(4) Whether the officer considered the use of any less intrusive means of effecting the detention or arrest.

(5) Whether the suspect appeared to be mentally ill or emotionally disturbed and whether the officer recognized this as a mitigating factor against the use of this type of force.

~~SECTION 1. It is the intent of the Legislature to later amend this bill to codify the holding of the United States Court of Appeals for the Ninth Circuit in Bryan v. McPherson, No. 08-55622, relating to the use of tasers by law enforcement.~~